

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-219266.2 **DATE:** July 24, 1985

MATTER OF: American Medical Supply & Service
Corp.--Request for Reconsideration

DIGEST:

Prior dismissal of a subcontractor protest is affirmed where the subcontract is not made by or for the government within the meaning of the exception allowing GAO review. A subcontract is only "for" the government where the prime contractor is operating a government-owned facility, is a construction management prime contractor, or is otherwise serving as a mere conduit between the government and the subcontractor.

American Medical Supply & Service Corp. requests reconsideration of our June 28, 1985 dismissal of the firm's protest concerning the award of a contract for medical equipment under invitation for bids (IFB) No. 455-59-85, issued by the Veterans Administration. We dismissed the protest in accordance with GAO Bid Protest Regulations, 4 C.F.R. § 21.3(f)(10) (1985), because American Medical was only a potential subcontractor/supplier and not an actual bidder under the solicitation. The firm requests reconsideration of our June 28 dismissal action on the ground that it disagrees with the applicability of our standard for the review of subcontractor protests to the instant case. We affirm our prior dismissal.

Our regulations implement 31 U.S.C. § 3551, et seq., as added by section 2741(a) of the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, 98 Stat. 1175, 1199. The CICA gives statutory authority to this Office to decide protests concerning the procurement actions of federal agencies filed by "interested parties." Under the CICA, an "interested party" is defined as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." This statutory definition of an "interested party" is expressly reflected in our regulations at 4 C.F.R. § 21.0(a). Accordingly, with respect to all bid protests filed on or

032662

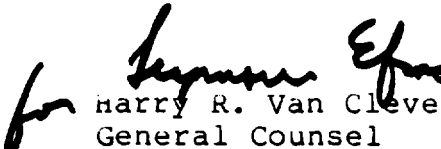
B-219266.2

after January 15, 1985, the effective date of section 2741(a) of the CICA, only protests involving a direct federal procurement filed by a party that comes within the statutory definition of an "interested party" can be considered. Thus, as provided by 4 C.F.R. § 21.3(f)(10), supra, this Office will not consider subcontractor protests except where the subcontract is by or for the government. PolyCon Corp., B-218304, et al., May 17, 1985, 64 Comp. Gen. _____, 85-1 CPD ¶ 567.

American Medical's disagreement with our dismissal appears to be predicated on its misunderstanding of the meaning of the term "for the government" in our regulations. The firm contends that we should have considered the protest simply because the medical equipment in question was being procured for a federal agency under a construction contract. However, the term "for the government" has a precise meaning and is only applicable in certain limited instances, not including the one presented here. Under the "for the government" exception, we will consider subcontractor protests where they concern subcontracts awarded by prime contractors operating and managing Department of Energy facilities; purchases of equipment for government-owned, contractor-operated plants; and procurements by construction management prime contractors under cost-type contracts. Information Consultants, Inc., B-213682, Apr. 2, 1984, 84-1 CPD ¶ 373. In each of these instances, the prime contractor principally provides large-scale management services to the government and, therefore, generally has an on-going purchasing responsibility. In effect, the prime contractor acts as a mere conduit between the government and the subcontractor and, as a result, the subcontract is said to be "for" the government. Id.

Since American Medical's subcontractor protest clearly did not involve a subcontract "for" the government so as to allow for our review, the protest was properly dismissed. Ronde & Schwarz-Polarad, Inc.--Reconsideration, B-219108.2, July 8, 1985, 85-1 CPD ¶ _____.

The prior dismissal is affirmed.


for Harry R. Van Cleave
General Counsel